

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of the Commission's Rules) CC Docket No. 94-102
To Ensure Compatibility with) RM-8143
Enhanced 911 Emergency Calling Systems)

To: The Commission

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PETITION FOR PARTIAL RECONSIDERATION
OF AMERITECH

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SUMMARY

Ameritech Corporation respectfully submits this Petition for Reconsideration of the Federal Communications Commission's ("Commission's") Report and Order¹ in this matter. Ameritech supports the Commission's efforts to facilitate the improved provision of 911 and E911 services by wireless carriers in order to enhance the provision of emergency services to the public. Nevertheless, Ameritech seeks clarification and reconsideration of certain rules adopted in the Report and Order. In particular, Ameritech requests the Commission to: (a) define the terms "appropriate PSAP" and "designated PSAP"; (b) eliminate the requirement to provide location information specifically in the form of longitude and latitude; (c) eliminate the requirement to process non-code identification calls; (d) establish guidelines for resolving carrier liability issues or make the requirement for a carrier to comply with the rules contingent on whether the corresponding state has absolved carriers from liability; (e) absolve covered carriers from any requirements or liability related to handset-based locking mechanisms; and (f) allow all parties involved in the provision of E911 to participate in the recovery of costs.

¹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, FCC 96-264, released July 26, 1996 (Report and Order and Further Notice of Proposed Rulemaking) [hereinafter Report and Order].

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Ameritech Corporation respectfully submits this Petition for Reconsideration of the Federal Communications Commission's ("Commission's") Report and Order¹ in this matter. Ameritech supports the Commission's efforts to facilitate the improved provision of 911 and E911 services by wireless carriers in order to enhance the provision of emergency services to the public. As providers of both wireline and wireless services, Ameritech and its subsidiaries have always given the highest priority to the handling of 911 calls. However, in order to ensure that Ameritech has the ability to implement the new guidelines without undue exposure to liability for circumstances beyond its control, Ameritech seeks clarification and reconsideration of certain rules adopted in the Report and Order. In particular, Ameritech requests the Commission to: (a) define the terms "appropriate PSAP" and "designated PSAP"; (b) eliminate the requirement to

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provide location information specifically in the form of longitude and latitude; (c) eliminate the requirement to process non-code identification calls; (d) establish guidelines for resolving carrier liability issues or make the requirement for a carrier to comply with the rules contingent on whether the corresponding state has absolved carriers from liability; (e) absolve covered carriers from any requirements or liability related to handset-based locking mechanisms; and (f) allow all parties involved in the provision of E911 to participate in the recovery of costs. These requests are discussed below.

I. The Commission Should Define the Terms "Appropriate PSAP" and "Designated PSAP"

In several places in the Report and Order, the Commission references the "appropriate PSAP" and the "designated PSAP."² However, the Commission does not explain how the appropriate PSAP or designated PSAP is determined. Nor does it explain whether the appropriate PSAP and the designated PSAP are the same entity.

For example, within 12 months of the effective date of the rules, subject licensees are required to process all 911 calls which transmit a code identification to "any appropriate PSAPs." Report and Order, paras. 10, 29. Also, in Section 20.18(b), the Commission requires subject licensees, within 12 months of the effective date of the rules, to process "all 911 wireless calls which do not transmit a Code Identification where requested by

² The term "PSAP" refers to a Public Safety Answering Point.

the administrator of the designated Public Safety Answering Point." In the Report and Order, paras. 10, 29, this "designated PSAP" is referred to as "any appropriate PSAP."

Additionally, in accordance with Section 20.18(d), within 18 months after the effective date of the rules, subject licensees must relay the telephone number of the caller and the location of the cell site or base station receiving the call to the "designated PSAP." The term "designated PSAP" is also used in the corresponding section of the Report and Order, para. 10.

Furthermore, in accordance with Section 20.18(e), within five years after the effective date of the rules, subject licensees must provide latitude and longitude information to the "designated PSAP."

These latter two requirements -- the provision of telephone number and location, and the provision of latitude and longitude information -- are applicable only if the "designated PSAP" has requested the services and is capable of receiving and using the data. 47 C.F.R. § 20.18(f).

Nowhere in the Report and Order or in Section 20.18 does the Commission explain what the "appropriate PSAP" or "designated PSAP" is. It is not clear whether private ambulance services would be included. Additionally, it is not clear how a covered carrier would select among multiple PSAPs that may serve the same area and be managed by separate agencies and private organizations. Furthermore, it is not clear whether the appropriate PSAP would be determined based on the capability of

the PSAP system and corresponding emergency services, or if the appropriate PSAP would be determined based on geographic location of the caller.

In particular, a determination based on geographic location would be difficult to implement. For example, at the 12-month benchmark, subject licensees likely will not have implemented the technology necessary to determine the location of the caller. And although the licensee may know which cell site is handling the call, more than one PSAP may handle 911 calls within the geographic area served by that cell site. Additionally, the cell site handling the call may be not be the nearest cell site to the caller. For example, many cell sites are on county borders, so that a call about an accident in Fairfax, Virginia may end up at the 911 center in Prince William County, Virginia or Montgomery County, Maryland.³ Thus, even the use of the cell site location may not be practical. This difficulty in determining the "appropriate" PSAP based on the geographic location of the caller will last at least until five years after the effective date of the rules, which is the deadline by which latitude and longitude information must be provided to the "designated PSAP." Assuming that no more than one PSAP serves any one particular geographic location, the latitude and longitude information should be useful in determining who is the "designated PSAP."

³ Lan Nguyen, As Mobile Phone Use Grows, "Cellular Samaritans" Clog 911, Washington Post, July 8, 1996, at B1.

Additionally, wireless carriers do not have the methodology for identifying which PSAP to use (e.g., such information is not in the ALI database). Wireless carriers must rely on information from LECs in order to identify the PSAP.

Furthermore, even after location information is available for use in determining the appropriate PSAP and even assuming wireless carriers obtain some methodology for identifying which PSAP to use, intersystem handoff of mobile wireless calls will still present some difficulty in determining the appropriate PSAP. For example, an end user may place a call while driving through Illinois, and pass into Wisconsin. If the end user were to put the first call on hold and place a call to 911 to report an accident, the 911 call would be directed to a PSAP corresponding to the Illinois starting location of the first call. Industry standards-setting bodies are currently looking at how the IS-41 standard may need to be changed so that the 911 call would be routed to the PSAP associated with the location of the end user when the 911 call is initiated, but this issue is not yet resolved.

Decisions concerning which PSAP should handle a call are not as complex for wireline local exchange carriers who know the exact location of the caller. Thus, although the Commission may have adopted a hands-off approach for wireline 911 services, Commission action is needed here so that wireless carriers are not put in the position of deciding which PSAP should receive a 911 call (which may expose these carriers to unnecessary

liability as litigants second-guess call routing after an incident). If more than one PSAP wishes to take the call, the Commission should also require PSAPs to determine in a mutually agreeable manner which PSAP will be the primary PSAP for call routing purposes, so that carriers have a clear-cut set of guidelines to follow.

In sum, Ameritech requests the Commission to define more precisely the terms "appropriate PSAPs" and "designated PSAPs," so that there is no confusion on this point. For example, the Commission could define "appropriate PSAP" as a PSAP that is capable of receiving the call based on current routing capabilities of the network involved, and which has requested and is capable of taking the calls based on the limits of technology. Additionally, Ameritech requests the Commission to require PSAPs to work together to determine which PSAP would be the "primary PSAP" for routing calls in situations where there is more than one "appropriate PSAP," and to encourage the industry standards-setting bodies to determine solutions to the difficulties presented by intersystem handoff of 911 calls.

II. The Commission Should Allow Flexibility in Caller Location Technology, Rather than Specifically Requiring the Provision of Longitude and Latitude Data

The Commission requires covered carriers to provide the location of a 911 call. The corresponding rule, Section 20.18(e), requires such carriers to provide the location of a 911 call by longitude and latitude. However, location information

could be provided using other standards of measurement, such as Universal Transverse Mercatur coordinates. Ameritech suggests that the wireless industry and public safety organizations should be permitted to determine the measurement standards that will be used in relaying location information, to give carriers maximum flexibility. It may very well turn out that one of these alternate methods proves to be more useful to 911 response personnel. Ameritech therefore requests the Commission to replace the phrase "by longitude and latitude" in Section 20.18(e) with the phrase "by longitude and latitude (or equivalent, available and feasible technological measurement standards)." This change would be consistent with the FCC's goal of determining the capabilities that must be achieved, while leaving the development of detailed technical standards to the industry.⁴

III. The Commission Should Not Require Covered Carriers to Transmit Non-Code Identification 911 Calls

Section 20.18(b) requires subject licensees to transmit non-code identification 911 calls where requested by authorized or designated PSAPs. Although Ameritech Cellular currently routes all 911 calls, Ameritech opposes the imposition of such a requirement for several reasons. First, PSAPs will have no way to call back non-code identification equipment users because such

⁴ See Report and Order, para. 73.

users have not subscribed to any service.⁵ This adds to the potential for carriers being unnecessarily dragged into litigation.

Second, by permitting non-code identification 911 calls, the Commission would facilitate prank calls and fraudulent calls.⁶ If the wireless carrier were not able to trace the call, the public safety agency would be prevented from making rational decisions as to the likelihood of a call being genuine, and deciding which calls to respond to.⁷ This result could be detrimental to public safety, especially for 911 systems that are already overwhelmed with 911 calls.⁸ Theoretically, an unscrupulous person could use the "redial" button on a cell phone to lock up the 911 system for long periods of time. Additionally, the industry is becoming aware of situations where phones for which the caller does not have service have been used to make non-911 calls by having the PSAP operator patch the call through as a wireline call. By requiring covered carriers to process non-code identification 911 calls, the Commission would

⁵ See PCIA Comments at 4.

⁶ Id. at 5.

⁷ See id.

⁸ 911's Busy Signal, The Fresno Bee, Mar. 21, 1996, at B4 (stating that the 911 system is "so overwhelmed by cellular phone users that increasingly people with real emergencies can't get through" and that this situation is "not just frustrating but dangerous"); Lan Nguyen, As Mobile Phone Use Grows, "Cellular Samaritans" Clog 911, Washington Post, July 8, 1996, at B1 (noting that an increase in the number of 911 cellular calls affects the speed that all calls may be answered).

be facilitating such fraudulent use of wireless services which, by tying up a line to the PSAP, would be detrimental to public safety.

Third, carriers would have no way of limiting their liability for any errors that occur in their processing of a 911 call from a non-code identification equipment user. Because the user would not have a service contract with any carrier, a carrier's liability could not be limited by the terms of such a contract. If the Commission were to affirm its decision to require carriers to process non-code identification calls, the Commission should ensure that carriers will not be liable for processing such calls.

Finally, the carrier will not be able to recover the cost of processing non-code identification calls from the user. Because the non-code identification user is not a customer or a roamer, any charges the carrier may impose on its customers or on roamers in order to support its provision of 911 service would not apply to the non-code identification user. The inability to recover costs from such users may be exacerbated if the rule were retained. PCIA stated that 68% of cellular telephones are purchased for safety and security reasons,⁹ and another recent survey found that 88% of people planning to buy cellular phones rate security as the most compelling reason.¹⁰ Many cellular

⁹ PCIA Comments at 5.

¹⁰ Survey Shows Greatest Cellular Usage Growth Still to Come, PR Newswire, Apr. 10, 1996, available in LEXIS, News Library, Allnws File.

users subscribe to the lowest rate plan and keep the phone in their car for emergency use only. If consumers were to learn that they do not need to subscribe to wireless service in order to obtain access to 911, consumers may purchase phones without subscribing to any wireless service. Wireless carriers would not receive fees from such users, and therefore would not receive support for the maintenance of the radio facilities that such consumers would use for emergency service. Thus, the costs of providing the emergency service would not be borne by the cost-causers, but instead would drive up the price of service for legitimate customers.

Ameritech therefore requests the Commission to modify Section 20.18(b) so that carriers would not be required to process non-code identification calls. The revised Section 20.18(b) would state:

(b) As of October 1, 1997, licensees subject to this section must process all 911 calls which transmit a Code Identification.

IV. The Commission Should Lead the Way to Resolving Carrier Liability Issues

In the Report and Order, para. 99, the Commission stated that it was "unnecessary" to exempt providers of E911 service from liability for negligent acts. The Commission suggested that wireless carriers could: (a) attempt to bind customers to contractual language; (b) require public safety organizations to hold them harmless for liability; and (c) if the liability were caused by Commission rules, argue that the actions complained of

were caused by acts of public authority. None of these suggestions resolves the problem.

First, Ameritech agrees that a carrier may attempt to bind its customers with contractual limitations on liability, just as wireline telephone companies place liability limitations in their tariffs. However, unlike wireline services, not all wireless calls are made by subscribers to the wireless service. Some calls may be made by roamers with whom the carrier has no contractual relationship. Other calls may be made by non-code identification users who do not have contracts with the carrier. More importantly, Ameritech has found that the vast majority of 911 calls from cellular phones are from "Good Samaritans" who observe an emergency situation. Indeed, SBC stated that as many as 97% of wireless 911 calls are made by Good Samaritans.¹¹ In such situations, the potential liability will be to the victims of the accident or other emergency, not to the Good Samaritan who placed the 911 call. Thus, the Commission's suggested contractual liability limitations do not resolve the liability issue for all users of wireless 911 services. The situation could be further exacerbated if the Commission were to adopt its proposal in the Further Notice of Proposed Rulemaking to require wireless carriers to process calls from users of other frequencies and protocols. Such a requirement would increase the potential liability to non-subscribers.

¹¹ See Report and Order, para. 129.

Second, the suggestion to require public safety organizations to hold the wireless carriers harmless for liability does not take into account the fact that a carrier must route 911 calls to the designated PSAP regardless of whether the PSAP agrees to hold the wireless carrier harmless. Thus, the Commission's suggestion does not resolve the liability issue as it applies to PSAPs.

Third, carriers can take no solace in the Commission's reference to Shippers National Freight Claim Council v. ICC, and its suggestion that carriers may defend themselves from liability by arguing that this liability was caused by "acts of public authority."¹² If one reads Shippers National and other supporting authority carefully, it becomes apparent that the acts referred to may be only those that are the direct cause of the harm for which liability attaches. Shippers National Freight Claim Council v. ICC, 712 F.2d 740, 745 (2d Cir. 1983); see also Conair Corp v. Old Dominion Freight Line, Inc., 22 F.3d 529, 531 (3rd Cir. 1994); Hopper Furs, Inc. v. Emery Air Freight Corp., 749 F.2d 1261, 1263 (8th Cir. 1984). This might not be the situation with E911 liability because, arguably, the Commission's rules would not be themselves the direct cause of the injury. Instead, they may only be the cause of the carrier taking action for which it, in turn, is exposed to liability. In such a case, Shippers National and related cases may not apply, and the carrier may still be exposed to liability under state tort law.

¹² Id. para. 99.

Additionally, there appear to be no federal appellate court cases addressing whether there is a liability exemption for acts of public authority by carriers subject to the Communications Act of 1934, as amended (such as the "covered carriers" that are the subject of this proceeding).

In sum, none of the Commission's three suggestions effectively solves the problem of carrier liability. The unique characteristics of the delivery of wireless 911 services necessitate Commission action. As noted by AT&T,¹³ in the wireless context, "external factors such as interference, fading, and battery power can impede the ability to deliver calls or produce misleading information." Such external factors are beyond the control of the wireless carrier, and their existence may be difficult to prove in a given case. Moreover, carriers face the problem of routing a call from a moving target (i.e., a car phone user) who may be travelling through an area served by several PSAPs. The Commission's traditional hands-off policy concerning liability for wireline telephone service will not work in the unique context of wireless 911 services.

Ameritech therefore requests the Commission to provide limitation of liability protection.¹⁴ The Commission may do so because, contrary to the Commission's conclusion in the Report and Order, para. 100, exemption from liability is necessary to achieve the goals of the Communications Act, one of which is to

¹³ AT&T Reply Comments at 29.

¹⁴ See Southwestern Bell Mobile Systems Comments (CA) at 8.

"promot[e] the safety of life and property,"¹⁵ and the Commission indeed has the statutory authority through Section 4(i) of the Act.¹⁶ In the Report and Order, para. 100, the Commission has helpfully referred to South Carolina Public Service Authority v. FERC, in which the United States Court of Appeals for the District of Columbia Circuit stated that the FERC might have "the power to specify a federal rule of liability governing its licensees, if it were essential to achieving the goals of the Act." 850 F.2d 788, 793 (D.C. Cir. 1988). Ameritech suggests that liability protection should be given to carriers that would include, at a minimum, the type of liability protection that may be available to the Good Samaritan who may have reported the emergency in the first instance.

Alternatively, just as the Commission made the 911 service deployment obligation contingent on the development of cost recovery mechanisms, the Commission also could make the 911 service deployment obligation contingent upon public safety organizations indemnifying carriers for negligence and other unintended errors, as suggested by U S WEST.¹⁷

As another alternative, if the Commission were not to provide the limitation of liability protection, Ameritech suggests that the Commission should establish guidelines for liability limitations and encourage regional public safety

¹⁵ 47 U.S.C. § 151.

¹⁶ 47 U.S.C. § 154(i).

¹⁷ U S WEST Supplemental Comments (CA) at 10.

planning groups to work with the states to adopt such limitations. This approach would be similar to that used by the Commission to implement the National Plan for use of public safety spectrum.¹⁸ There, regional public safety planning groups developed plans tailored to their areas and their own particular communications needs, while the Commission provided general oversight.¹⁹

V. Wireless Carriers Should Not Be Liable for Handset-Based Locking Mechanisms

In the Report and Order, para. 42, the Commission stated that "covered carriers are directed to make good faith efforts with manufacturers to ensure that, with respect to handsets manufactured in the future, these handsets are capable of overriding subscriber-programmed locking mechanisms and transmitting 911 calls." However, the locking capabilities of handsets are beyond the control of carriers. Any rules concerning handset-based locking mechanisms should apply only to manufacturers, or those who locked the handset.

Ameritech therefore requests the Commission to modify this requirement so that it applies only to manufacturers (or those who lock the handsets) and not to covered carriers. Ameritech further requests the Commission to absolve carriers from liability for 911 calls that cannot be processed due to the

¹⁸ Development and Implementation of a Public Safety National Plan, 3 FCC Rcd. 905, 905 (1987).

¹⁹ See id.

operation of the locking mechanisms in handsets. Such liability should be borne solely by the manufacturers of the handsets and others who lock the handsets.

VI. All Entities Involved in the Provision of E911 Services Should Be Allowed to Participate in Recovering Costs

Although the Commission declined to prescribe a cost recovery mechanism, Ameritech is concerned that the Commission may have implicitly placed the burden of recovering the cost of providing wireless 911 service only on the covered carriers. The Commission referenced possible conflicts with Section 332(c) of the Communications Act of 1934, as amended.²⁰ However, covered carriers are not the only entities that will incur costs in implementing the Commission's requirements. PSAPs and wireline local exchange carriers will need to upgrade equipment and switches in order to support wireless 911 services.²¹ As stated by PCIA,²² wireless carriers should not be saddled with the costs of upgrading local exchange carrier facilities in order to comply with the rules adopted in this proceeding.

Ameritech therefore requests the Commission to allow all parties involved in the provision of E911 -- including wireline

²⁰ Report and Order, paras. 89-90.

²¹ As BellSouth noted, wireline carriers will need to install new technologies to provide pseudo-ANI information. BellSouth Reply Comments (CA) at 12; see also Motorola Reply Comments (CA) at 2 (noting that local exchange switches will need to be upgraded).

²² PCIA Reply Comments at 11.

local exchange carriers and PSAPs -- to participate in the recovery of their own costs in implementing the Commission's 911 rules. With that proviso, Ameritech supports the Commission's decision to permit the states and local governments to determine the details of cost recovery. Cost recovery may not only involve collecting funds, but also may be based on tax incentives, or other financial accounting conditions.


Conclusion

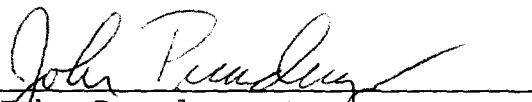
Ameritech supports the Commission's efforts to improve the provision of emergency services in the interest of public safety. For the foregoing reasons, Ameritech requests the Commission to:

- (a) define the terms "appropriate PSAP" and "designated PSAP";
- (b) eliminate the requirement to specifically provide longitude and latitude information from Section 20.18(e); (c) eliminate the requirement to process non-code identification calls in Section 20.18(b); (d) establish guidelines for resolving carrier liability issues or make the requirement for a carrier to comply with the rules contingent on whether the corresponding state has absolved carriers from liability; (e) absolve covered carriers from any requirements or liability concerning handset-based

locking mechanisms; and (f) allow all parties involved in the provision of E911 to participate in the recovery of costs.

Respectfully submitted,
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